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| 10/073,324      | 02/13/2002  | Fredrick S. Liljegren |                     | 4559             |

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Washington, DC 20240

EXAMINER

ELLINGTON, ALANDRA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2855

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/073,324

Applicant(s)

LILJEGREN ET AL.

Examiner

Alandra N Ellington

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 8/26/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7,8,12-15,18,19 and 21 is/are rejected.
- 7) ☒ Claim(s) 3,4,6,9,10 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "channels" (claims 12 and 13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7, 8, 12-14, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Addink et al (US<sup>D</sup> 453,692 \$).

With respect to Claim 1, Addink et al discloses a measuring cup device for use with a water sprinkler in evaluating sprinkler performance, said device comprising: a measuring cup including measurement markings along at least one side thereof and a

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closed bottom end; and a plurality of legs, formed integrally with said cup and extending beyond the bottom end of said cup, for supporting the device in an upright position in the ground, said legs including pointed end portions for enabling the legs to be stuck into the ground to support the device, said cup and said legs being of a shape permitting stacking of said device on a further said device such that the cup of said device is disposed in the corresponding cup of the further said device and the legs of said device are disposed on the corresponding legs of the further said device ({Figs. 1 and 4-7}).

With respect to Claim 2, Addink et al discloses the device of claim 1 wherein said cup is of a tapered shape having a smaller end terminating at said closed bottom ({Figs. 1 and 4}).

With respect to Claim 7, Addink et al discloses the device of claim 1 wherein said cup includes an annular edge defining an opening at an end of said cup opposite to said closed end ({Figs. 1, 9 and 10}).

With respect to Claim 8, Addink et al discloses the device of claim 7 wherein said cup includes a plurality of flanges extending outwardly from said annular edge at equally spaced locations therearound and wherein said legs are formed integrally with said flanges ({Figs. 1-4}).

With respect to Claim 12, Addink et al discloses a stackable device for measuring sprinkler performance, said device comprising: a tapered vessel having an angled side wall including measurement markings therealong, an open top, a plurality of flanges extending outwardly from said top, and a closed bottom, and a plurality of legs, formed

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integrally with said vessel and extending downwardly from said flanges substantially beyond said bottom, for supporting the device, said legs including channels therein and said vessel and said legs being such a shape that said device can be stacked on a further said device with the cup of said device being received in the correspondence cup of the further said device and the channels of the legs of said device being received in the corresponding channels of the legs of the further said device ({Figs. 1-3 and 5}).

With respect to Claim 13, Addink et al discloses the device of claim 12 wherein the channels of said legs have a v-shaped cross section ({Fig. 2}).

With respect to Claim 14, Addink et al discloses the device of claim 12 wherein said open top is defined by an annular edge of said vessel ({Fig. 1}).

With respect to Claim 18, Addink et al discloses the device of claim 1 wherein said cup has an open top and is of greatest cross-sectional area at said open top ({Figs. 1 and 8-10}).

With respect to Claim 19, Addink et al discloses the device of claim 12 wherein said cup has an open top and is of greatest cross-sectional area at said open top ({Figs. 1 and 8-10}).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Addink et al (US D453,692 S) in view of Kerman (US D461,420 S).

With respect to Claims 5 and 21, Addink et al discloses the claimed invention except for a cup with measurement marking along two sides thereof. Kerman teaches a measuring cup having measurement markings along two sides thereof. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Addink et al with the teaching of Kerman to include measurement markings along two sides of the measuring cup device for the purpose of obtaining two units of measurements for the same fluid, such as what is found on a typical Pyrex® measuring cup.

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Addink et al (US D453,692 S) in view of Hoeting et al (6,262,732 B1).

With respect to Claim 15, Addink et al discloses the claimed invention except for stating the device is composed of plastic. Hoeting et al teaches a stackable measuring cup 10 that can be made from a variety of materials, one being plastic (col. 1 lines 10-15, col. 3 lines 28-32). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Addink et al with the teaching of Hoeting et al to include a measuring cup device made of plastic for the purpose of using translucent and cheap material in order to determine volumetric indicia within the measuring device (see Hoeting et al, col. 1 lines 12-33).

***Allowable Subject Matter***

5. Claims 17 and 20 are allowed.
6. Claims 3, 4, 6, 9, 10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-10 and 12-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Addink et al (US D461,729 S) discloses a spikeless water collector for irrigation system.

B. Geschwender (6,609,422 B1) discloses a rain gauge.

C. Farley (Des. 343,129) discloses a temperature measuring cup.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alandra N. Ellington whose telephone number is (703)305-4449. The examiner can normally be reached on Monday - Friday, 6:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (703)305-4816. The fax phone

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number for the organization where this application or proceeding is assigned is  
(703)308-7382.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

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Art Unit 2855



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